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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,767	10/30/2003	Andrew Schydlowsky	15651-002001	8887
26191	7590	06/04/2009	EXAMINER	
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022				WEISBERGER, RICHARD C
3693		ART UNIT		PAPER NUMBER
NOTIFICATION DATE		DELIVERY MODE		
06/04/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* ANDREW SCHYDLOWSKY

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Application No. 10/697,767  
Technology Center 3600

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Mailed: June 3, 2009

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Before ERIC W. HAWTHORNE, *Supervisory Paralegal Specialist*  
HAWTHORNE, *Supervisory Paralegal Specialist.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on April 21, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

**EXAMINER'S ANSWER, GROUNDS OF REJECTION**

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed November 3, 2008 under the heading "Grounds of rejection" is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading "New Grounds of Rejection" in the Examiner's Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining Procedure (MPEP) § 1207.02 and 1207.03 (8<sup>th</sup> ed. Rev. 6, Sept 2007)* for details.

Specifically, the Examiner's Answer sets forth a rejection under 35 U.S.C. § 112, second paragraph, without referring to the claims under rejection; whereas the last Office action, including any mailed Advisory Action(s) finds that claims 26-29,31,33,34, and 46-49 are the claims rejected

under 35 U.S.C. 112, second paragraph. Clarification of all Grounds of rejection for all claims under 35 U.S.C. § 112 is required.

**CONCLUSION**

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) enter a “paper” clarifying the claimed § 112 rejections omitted from the Examiner’s Answer mailed November 3, 2008; or
- 2) if necessary, generate a new Examiner’s Answer setting forth the correct Grounds of rejection and to correct other sections of the Answer as may be required; and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWH/PEB

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